

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	Case No. 4:21CR3060
)	
Plaintiff,)	
)	
vs.)	MOTION FOR RETESTING OF
)	DRUG QUANTITY AND QUALITY
DAVID W. SWANSON,)	and MOTION FOR APPROVAL
)	OF EXPENDITURES
Defendant.)	

COMES NOW, Defendant David W. Swanson, by counsel, and moves the Court for an order granting him a hearing and thereafter an order allowing retesting of drug quantity and quality and approving expenditures. In support of this motion, Defendant shows the Court:

1. According to a report prepared by Investigator Dahlke (ACI #4), on July 7, 2020, Dahlke located a “clear plastic sandwich bag with large shards of methamphetamine” in the 2016 Black GMC Sierra (Sierra) in which Swanson had been found. The bag with suspected methamphetamine was tagged into evidence and sent to the Nebraska State Patrol (NSP) Laboratory for testing.

2. The government has produced a Nebraska State Patrol Laboratory Report (NSP Report) regarding methamphetamine, which lists Defendant as the suspect, and states the offense date of July 7, 2020, which is the date of the offense alleged in this case. The results in the NSP report indicate a net weight of 77.69 grams at 99.8 percent +/- 3.5 percent purity, resulting in an actual amount of 74 grams of methamphetamine. The NSP report is silent as to the size of the sample, or the number of samples which were used to determine purity.

3. As this Court is aware, Ana Idigima (Idigima), who has been indicted in this Court for conspiracy to distribute and possess with intend to distribute various controlled substances in 2021. (4:21CR3139). Defendant alleges that Idigima was employed by NSP as an evidence

technician during the time period when the evidence was tested in Defendant's case (*i.e.*, July, 2020), and that Idigima routinely handled narcotics evidence which was in the custody or possession of NSP. The drug evidence in this case was in the custody or possession of NSP for at least a short period of time in July, 2020, and possibly thereafter. Defendant believes, based on the fact that Idigima was employed by NSP as an evidence technician who routinely handled narcotics evidence, that she may have handled the drug evidence in this case.

4. Defendant requests that the methamphetamine that is attributed to him be retested by an independent lab as he disputes the results of the NSP Report. Defendant alleges that the quantity and quality of methamphetamine attributed to him is not correct, and that there is a reasonable suspicion that the methamphetamine seized in this case was handled by Idigima and may have been tampered with.

5. The denial of the retest would substantially prejudice the Defendant and potentially expose him to an excessive sentence.

6. Defendant requests that NMS Labs, 200 Welsh Road, Horsham, PA 19044 retest the methamphetamine that is attributed to Defendant. NMS Labs is registered with the Drug Enforcement Agency (DEA) and possesses a DEA License.

7. Defendant estimates that the cost of the retesting and shipping would be approximately \$1,000.00.

8. Defendant has previously been found indigent. Defendant's counsel is court-appointed. Defendant requests that the Court authorize funding for the investigative, expert, and/or other services which may be involved in the requested retesting, pursuant to 18 U.S.C. § 3006A. Defendant alleges that these services are necessary for adequate representation of Defendant.

WHEREFORE, Defendant respectfully requests that the Court enter an order: a) allowing retesting of the quality and quantity of the methamphetamine which is the subject of the aforementioned NSP Report by NMS Labs; and, b) authorizing funding for the investigative, expert, or other services associated with the retesting and presentation of the results.

Dated: February 22, 2022.

DAVID W. SWANSON, Defendant,

By: /s/ Joshua D. Barber
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing and any attachments thereto were electronically filed with the Clerk of the Court via the CM/ECF system, which sent notification of said filing to all attorneys of record in the above-captioned matter, including Sara Fullerton, at sara.fullerton@usdoj.gov, on February 22, 2022.

/s/ Joshua D. Barber